DEC 10
MICHAEL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-568

LUTHER ESTEP, a Minor, by JAMES STANLEY, HIS Legally Appointed Guardian, *Petitioner*

v.

JANLER PLASTIC MOLD CORPORATION, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF FOR PETITIONER

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The sole purpose of this reply brief is to scotch any misimpression that the judgment of the Supreme Court of Illinois rests on an independent state ground.

In its brief in opposition to certiorari, respondent asserts that petitioner "was not an 'illegally employed minor' under the laws of Illinois", and therefore the "constitutional issue to be heard by this court does

not apply . . ." (p. 2). But the Supreme Court of Illinois expressly pretermitted this ground of decision and relied exclusively on the time-bar as the basis for its judgment (Pet. 4a). It is the imposition of the time-bar that presents the federal constitutional question; the judgment whose review is sought rests solely on that time-bar; there is, therefore, no independent state ground on which to support the judgment.

To preclude any misunderstanding, we reiterate what we stated as to this matter in our petition (p. 6, n. 1):

> Janler [the respondent] had also moved to dismiss the complaint on the ground that the determination whether a minor was illegally employed is governed solely by reference to Illinois law to the exclusion of federal law, and that by Illinois law Estep was not illegally employed (R. 17). The Circuit Court ordered and the Appellate Court upheld dismissal of the complaint on this alternative ground as well as on the limitations ground (*infra*, pp. 5a, 7a). However, the Illinois Supreme Court expressly refrained from basing decision on the alternative ground, stating that "[i]n view of our holding on the limitations issue, we find it unnecessary to consider the plaintiff's argument that standards other than the [Illinois] Child Labor Law . . . are to apply in determining what constitutes an 'illegally employed minor' " (*infra*, p. 4a). Accordingly, the judgment of the Illinois Supreme Court does not rest on an independent state ground.

It goes without saying that this Court has jurisdiction to review a final judgment where "the state court does not decide against a petitioner or appellant upon an independent state ground. . . . We cannot refuse jurisdiction because the state court might have based

its decision, consistently with the record upon an independent and adequate non-federal ground."[1] Since the judgment below was not rested on an independent state ground, the federal constitutional question is squarely presented, and respondent states no reasons at all in opposition to review of that question.

Respectfully submitted,

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[1] *Indiana ex rel. Anderson* v. *Brand*, 303 U.S. 95, 98 (1938). See also, Stern and Gressman, Supreme Court Practice, 137-138 (4th ed. 1969), and cases cited.